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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Case No. 1:19-cr-227
(LJV)

v.

February 20, 2024

JOSEPH BONGIOVANNI ,

Defendant.

TRANSCRIPT EXCERPT - EXAMINATION OF R.K.
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

TRINI E. ROSS, UNITED STATES ATTORNEY
BY: JOSEPH M. TRIPPI, ESQ.
NICHOLAS T. COOPER, ESQ.
CASEY L. CHALBECK, ESQ.

Assistant United States Attorneys
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202
And

UNITED STATES DEPARTMENT OF JUSTICE
BY: JORDAN ALAN DICKSON, ESQ.
1301 New York Ave NW
Suite 1000
Washington, DC 20530-0016
For the Plaintiff

SINGER LEGAL PLLC
BY: ROBERT CHARLES SINGER, ESQ.
80 East Spring Street
Williamsville, New York 14221
And

LAW OFFICES OF PARKER ROY MacKAY
BY: PARKER ROY MacKAY, ESQ.
3110 Delaware Avenue
Kenmore, New York 14217
For the Defendant

PRESENT:

BRIAN A. BURNS, FBI Special Agent
MARILYN K. HALLIDAY, HSI Special Agent
KAREN A. CHAMPOUX, USA Paralegal

| | | |
|---------|----------------------------------|--|
| 1 | LAW CLERK: | REBECCA FABIAN IZZO, ESQ. |
| 2 | COURT DEPUTY CLERK: | COLLEEN M. DEMMA |
| 3 | COURT REPORTER: | ANN MEISSNER SAWYER, FCRR, RPR, CRR Robert H. Jackson Federal Courthouse 2 Niagara Square Buffalo, New York 14202 Ann_Sawyer@nywd.uscourts.gov |
| 4 | | |
| 5 | | |
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| 7 | * * * * * | |
| 8 | | |
| 9 | (Excerpt commenced at 1:40 p.m.) | |
| 10 | (Jury is not present.) | |
| 01:40PM | THE COURT: | So, yeah. Okay. So let's bring him in, |
| 01:40PM | | please. |
| 01:40PM | | (Mr. R.K. seated in the witness box at 1:41 p.m.) |
| 01:41PM | THE COURT: | Okay, Pat. |
| 01:42PM | | (Jury seated at 1:42 p.m.) |
| 01:42PM | THE COURT: | Welcome back, everyone. The record will |
| 01:42PM | | reflect that all our jurors are present. Let's swear in the |
| 01:42PM | | next witness. |
| 01:42PM | | |
| 01:42PM | R.K., | having been duly called and sworn, testified as follows: |
| 01:43PM | | |
| 01:43PM | MR. TRIPI: | May I inquire, Your Honor? |
| 01:43PM | THE COURT: | You may. |
| 01:43PM | MR. TRIPI: | Thank you, Your Honor. |
| 01:43PM | | |
| 25 | | |

01:43PM

1 DIRECT EXAMINATION BY MR. TRIPI:

01:43PM 2 Q. Good afternoon, Mr. R.K.

01:43PM 3 A. Good afternoon.

01:43PM 4 Q. Mr. R.K., how old are you, sir?

01:43PM 5 A. 50.

01:43PM 6 Q. And where are you from generally?

01:43PM 7 A. Buffalo, New York.

01:43PM 8 Q. And did you grow up in the Buffalo area?

01:43PM 9 A. Yes, sir.

01:43PM 10 Q. How far have you gone in school?

01:43PM 11 A. About eleven.

01:43PM 12 Q. Eleventh grade?

01:43PM 13 A. Yeah.

01:43PM 14 Q. What school did you attend up till eleventh grade?

01:43PM 15 A. Buffalo Alternative.

01:43PM 16 Q. Buffalo Alternative? Is that a high school?

01:43PM 17 A. Yeah.

01:43PM 18 Q. Okay. Now, Mr. R.K., I just want to address something

01:43PM 19 right out of the gate. Is it fair to say that you didn't

01:43PM 20 want to come here to court today?

01:43PM 21 A. I didn't want to -- what?

01:43PM 22 Q. That you didn't want to come here to testify?

01:43PM 23 A. Yeah.

01:43PM 24 Q. Okay. And as a result of that, did you actually get

01:43PM 25 arrested under what's called a material witness warrant and

01:44PM 1 brought to court to testify?

01:44PM 2 A. Yes.

01:44PM 3 Q. Okay. And fair to say that you previously testified in a
01:44PM 4 federal grand jury in this matter?

01:44PM 5 A. Yes, sir.

01:44PM 6 Q. Okay.

01:44PM 7 **THE COURT:** I want you to speak right into the
01:44PM 8 microphone, please.

01:44PM 9 **THE WITNESS:** Yes, sir.

01:44PM 10 **THE COURT:** Nice and loud.

01:44PM 11 **THE WITNESS:** Yes, sir.

01:44PM 12 **BY MR. TRIPI:**

01:44PM 13 Q. And that was some years ago; is that right?

01:44PM 14 A. Yes, sir.

01:44PM 15 Q. Other than that, and a brief few-minute meeting earlier
01:44PM 16 today, we haven't spoken prior to your testimony today, other
01:44PM 17 than your grand jury, and briefly on the lunch break; is that
01:44PM 18 correct?

01:44PM 19 A. Yes, sir.

01:44PM 20 Q. Okay. Now, would it be fair to say that you -- you have
01:44PM 21 a criminal record, right?

01:44PM 22 A. Yes, sir.

01:44PM 23 Q. And generally, that record includes several felony
01:44PM 24 convictions; is that right?

01:44PM 25 A. Yes, sir.

01:45PM 1 **MR. SINGER:** Judge, we object to the leading at this
01:45PM 2 time.

01:45PM 3 **THE COURT:** Yeah, sustained. Let's not lead, please,
01:45PM 4 Mr. Tripi.

01:45PM 5 **MR. TRIPI:** Okay, Judge. For future reference, just
01:45PM 6 611C, if you'll keep it under advisement, that's all. Okay?

01:45PM 7 **BY MR. TRIPI:**

01:45PM 8 Q. What types of convictions do you have?

01:45PM 9 A. Burglaries.

01:45PM 10 Q. Okay. Now, directing your attention to -- back to April
01:45PM 11 2013, do you remember that general time frame of your life?

01:45PM 12 A. Yes, sir.

01:45PM 13 Q. Around that time were you interviewed -- without telling
01:45PM 14 us what the interview was about -- were you interviewed by
01:45PM 15 the Amherst Police Department?

01:45PM 16 A. Yes, sir.

01:45PM 17 Q. And can you tell the jury what the circumstances were,
01:45PM 18 had you gotten in some trouble?

01:45PM 19 A. Yes.

01:45PM 20 Q. Can you tell the jury what that was? Just generally.

01:45PM 21 A. It was a burglary.

01:45PM 22 Q. Okay. Do you remember what law enforcement agency
01:45PM 23 investigated that burglary?

01:45PM 24 A. No.

01:45PM 25 Q. Okay. What police agency do you remember speaking with

01:46PM 1 after the burglary?

01:46PM 2 A. Buffalo.

01:46PM 3 Q. Okay. Eventually, did you get referred to an Amherst
01:46PM 4 Police Department detective?

01:46PM 5 A. Yes.

01:46PM 6 Q. Okay. Do you remember that person's name?

01:46PM 7 A. No, I don't.

01:46PM 8 Q. Did that Amherst Police Department detective refer you to
01:46PM 9 the DEA?

01:46PM 10 A. Yes.

01:46PM 11 Q. Okay. Who were you referred to at the DEA?

01:46PM 12 A. Well, who did I speak with? Or who --

01:46PM 13 Q. Yeah, who were you put in touch with at -- let me
01:46PM 14 withdraw.

01:46PM 15 Were you put in touch with a DEA agent?

01:46PM 16 A. Yes.

01:46PM 17 Q. Do you remember that person's name?

01:47PM 18 A. Yes.

01:47PM 19 Q. What was that person's name?

01:47PM 20 A. Oh, I don't know how to say it. Joseph.

01:47PM 21 Q. Can you do the best to say?

01:47PM 22 A. Bonajonavie. Bonjonnlie. I don't know.

01:47PM 23 Q. Do you see that person in court today?

01:47PM 24 A. Yes.

01:47PM 25 Q. Can you please point to him and describe something he's

01:47PM 1 wearing?

01:47PM 2 A. Burgundy tie.

01:47PM 3 Q. In which chair over there?

01:47PM 4 A. Sitting right in the middle.

01:47PM 5 **MR. TRIPI:** Your Honor, may the record reflect that
01:47PM 6 the witness has identified Mr. Bongiovanni.

01:47PM 7 **THE COURT:** It does.

01:47PM 8 **MR. TRIPI:** Thank you, Your Honor.

01:47PM 9 **BY MR. TRIPI:**

01:47PM 10 Q. And what -- what was the circumstances under which you
01:47PM 11 were put in touch with Mr. Bongiovanni, can you tell the
01:47PM 12 jury?

01:47PM 13 A. There was -- because I knew a kid named T.S. who was a,
01:47PM 14 you know, doing a lot of things. So they, you know, if I
01:47PM 15 helped them get him, I'd get some help on my case.

01:48PM 16 Q. And at that time, who was T.S. connected to as far as you
01:48PM 17 knew doing those things?

01:48PM 18 A. Ron Serio.

01:48PM 19 Q. And when you say "doing things," what are you referring
01:48PM 20 to?

01:48PM 21 A. Marijuana, cocaine.

01:48PM 22 Q. What about marijuana and cocaine?

01:48PM 23 A. Just had a lot of it, transported it.

01:48PM 24 Q. So transporting, as in distribution?

01:48PM 25 A. Yeah.

01:48PM 1 Q. Okay. Do you remember what happened when you first met
01:48PM 2 with Special Agent Bongiovanni?

01:48PM 3 A. I -- I was told to, you know, get more friendly with him
01:48PM 4 and try to buy, you know, at least an ounce or so from him.
01:48PM 5 And to try to find out where his warehouse was.

01:48PM 6 Q. Okay. When you first met with Bongiovanni, were you
01:49PM 7 interviewed by him?

01:49PM 8 A. Yes, him and a couple other agents.

01:49PM 9 Q. Okay. Where was that?

01:49PM 10 A. At the DEA agent, on I believe it's Swan.

01:49PM 11 Q. Okay.

01:49PM 12 A. I'm not sure.

01:49PM 13 Q. Was it at their office space?

01:49PM 14 A. Yeah, the office space, yes.

01:49PM 15 Q. And in that setting, with how many other agents other
01:49PM 16 than Mr. Bongiovanni did you meet with?

01:49PM 17 A. Probably four.

01:49PM 18 Q. Okay. And were they asking you questions?

01:49PM 19 A. Yes.

01:49PM 20 Q. Were you giving answers?

01:49PM 21 A. Yes.

01:49PM 22 Q. And who were you telling them about in that meeting?

01:49PM 23 A. T.S.

01:49PM 24 Q. Did you mention Ron Serio as well?

01:49PM 25 A. I mentioned that I was in a room where, you know, I seen

01:49PM 1 Ron Serio and somebody else do some business. But other than
01:50PM 2 that, the main focus was T.S.

01:50PM 3 Q. Okay. How long was that meeting, that debriefing, that
01:50PM 4 interview?

01:50PM 5 A. I don't know. Maybe 30 minutes.

01:50PM 6 Q. After that, did you agree to sign up with Special Agent
01:50PM 7 Bongiovanni to be a confidential source?

01:50PM 8 A. Yes.

01:50PM 9 Q. And were you advised of the series of rules that there
01:50PM 10 were?

01:50PM 11 A. I basically was just told get ahold of T.S., try to
01:50PM 12 befriend him. Try to, you know, make buys from him. And
01:50PM 13 then the one time he had told me he had had a warehouse, and
01:50PM 14 so I told them. And they wanted me to find out where his
01:50PM 15 warehouse was.

01:51PM 16 Q. I'm not there yet, I'm still talking about getting signed
01:51PM 17 up. So if you can focus back on that.

01:51PM 18 A. Oh, okay.

01:51PM 19 Q. Did you have to sign a document --

01:51PM 20 A. Yes. Yes. Yes.

01:51PM 21 Q. Okay. Did that document have essentially the parameters
01:51PM 22 of your agreement with the DEA?

01:51PM 23 A. Yes. They gave me a number and everything.

01:51PM 24 Q. I'm going to hand you up a document, it's marked
01:51PM 25 Government Exhibit 9E-2. I'm going to ask you to look at

01:51PM 1 this two-page document. And when you're done, look up, okay?

01:51PM 2 A. Yeah.

01:51PM 3 Q. Can you look at the second page? There's a second page

01:51PM 4 there.

01:52PM 5 A. Yes.

01:52PM 6 Q. Okay. Do you see -- do you see -- do you recognize that

01:52PM 7 two-page document?

01:52PM 8 A. Yes.

01:52PM 9 Q. What is that two-page document?

01:52PM 10 A. That's what they give you when you sign up, that's what

01:52PM 11 they give you when you sign up to be a confidential

01:52PM 12 informant.

01:52PM 13 Q. And is that your agreement?

01:52PM 14 A. Yes. My initials, my signature.

01:52PM 15 Q. Okay. So you recognize it?

01:52PM 16 A. Yes.

01:52PM 17 Q. Is that an accurate copy of what you signed?

01:52PM 18 A. Yes.

01:52PM 19 **MR. TRIPI:** Your Honor, the government offers

01:52PM 20 Exhibit 9E-2.

01:52PM 21 **MR. SINGER:** No objection.

01:52PM 22 **THE COURT:** Received without objection.

01:52PM 23 **(GOV Exhibit 9E-2 was received in evidence.)**

01:52PM 24 **MR. TRIPI:** Thank you, Your Honor.

01:52PM 25 It's going to be shown on the screen next to you in

01:52PM 1 just a moment, okay?

01:52PM 2 Ms. Champoux, can we publish the document, please,
01:53PM 3 now that it is in evidence? And can we just blow up the top
01:53PM 4 half of the page for the jury to be able to read it?

01:53PM 5 Subsection I.

01:53PM 6 May the record reflect we've blown up the top half of
01:53PM 7 the document, Your Honor, and I'm publishing it for the jury.
01:53PM 8 I'm not going to ask the witness to read it aloud.

01:53PM 9 **BY MR. TRIPI:**

01:53PM 10 Q. Mr. R.K., I know that's up on the monitor, but as you
01:53PM 11 understand it as part of your agreement, did you agree to
01:53PM 12 consensual recording and the wearing of what's commonly
01:53PM 13 referred to as a wire, if necessary?

01:54PM 14 A. Yes.

01:54PM 15 **MR. TRIPI:** Okay. If we can unbold that, and can we
01:54PM 16 bold the second part?

01:54PM 17 **BY MR. TRIPI:**

01:54PM 18 Q. Mr. R.K., what was your understanding about when you
01:54PM 19 signed up about how your identity would be treated?

01:54PM 20 A. I was understood -- it was understood that my identity
01:55PM 21 would be, you know, unknown. That nobody would know what I
01:55PM 22 did. But that was false.

01:55PM 23 Q. And as part of the agreement, did you agree to provide
01:55PM 24 truthful information?

01:55PM 25 A. Yes.

01:55PM 1 **MR. TRIPI:** Okay. We can unhighlight that.

01:55PM 2 I'm going to ask Ms. Champoux to move to page 2 of
01:55PM 3 this document. And if we can just bold the top paragraphs
01:55PM 4 there. Provide a moment for the Court and the jury to read
01:55PM 5 it.

01:56PM 6 **BY MR. TRIPI:**

01:56PM 7 Q. Now, how long did you agree to serve as a confidential
01:56PM 8 source for the DEA? What was the term of your agreement?

01:56PM 9 A. I figured that --

01:56PM 10 Q. I'm going to ask you, look at paragraph 13. Are those
01:56PM 11 the dates filled in there that you agreed to?

01:56PM 12 A. Yes. Yes.

01:56PM 13 Q. Is that April 29th, 2013 to April 29, 2014?

01:56PM 14 A. Yes. Yes.

01:56PM 15 Q. And in the column, we see a bunch of initials. Have all
01:56PM 16 of those initials been yours?

01:56PM 17 A. Yes.

01:56PM 18 Q. R.K., R.K.?

01:56PM 19 A. Yes.

01:56PM 20 **MR. TRIPI:** Ms. Champoux, if we can look at the
01:56PM 21 signature page, please.

01:56PM 22 **BY MR. TRIPI:**

01:56PM 23 Q. And that top line there, is that your signature under the
01:56PM 24 label confidential source?

01:56PM 25 A. Yes.

01:56PM 1 Q. And then under your name, there's a number there; is that
01:56PM 2 right?

01:57PM 3 A. Yes.

01:57PM 4 Q. Can you read that, please?

01:57PM 5 A. C.S.-13-144841.

01:57PM 6 Q. And who signed below your name as the handling agent or
01:57PM 7 controlling investigator? Sorry.

01:57PM 8 A. Bongiovanni.

01:57PM 9 Q. And do you know who's name appears on the bottom line
01:57PM 10 there? Do you remember who that was?

01:57PM 11 A. No, I don't.

01:57PM 12 Q. Okay. After you signed this document and reached this
01:57PM 13 agreement --

01:57PM 14 **MR. TRIPI:** We can take that down, now.

01:57PM 15 **BY MR. TRIPI:**

01:57PM 16 Q. -- who was your handling agent?

01:57PM 17 A. Bongiovanni.

01:57PM 18 Q. Did he have contact information for you?

01:57PM 19 A. Yes.

01:57PM 20 Q. Who type of contact information did you provide him for
01:57PM 21 yourself?

01:57PM 22 A. I was to call T.S.

01:57PM 23 Q. No. Contact information for you.

01:58PM 24 A. For me?

01:58PM 25 Q. How was Bongiovanni supposed to get ahold of you?

01:58PM 1 A. Oh. I would call him at the -- at the office.

01:58PM 2 Q. Okay. Did you have a phone number?

01:58PM 3 A. Yes.

01:58PM 4 Q. Did you provide that to him?

01:58PM 5 A. Yes.

01:58PM 6 Q. Did you have family in the area?

01:58PM 7 A. Yes.

01:58PM 8 Q. Did you provide their addresses?

01:58PM 9 A. No.

01:58PM 10 Q. Okay. Do you know whether or not he knew where your

01:58PM 11 mother lived?

01:58PM 12 A. Yes.

01:58PM 13 Q. Now, by the time you signed up as a confidential source,

01:58PM 14 how long had you known T.S.?

01:58PM 15 A. About eight months.

01:58PM 16 Q. How long had you known Ron Serio?

01:58PM 17 A. Two years.

01:58PM 18 Q. How long had you known Ron's brother, Tom Serio?

01:58PM 19 A. Since 1994.

01:58PM 20 Q. Did you know an individual named David Oddo? Oddo?

01:59PM 21 O-D-D-O?

01:59PM 22 A. Yes.

01:59PM 23 Q. How long had you known him?

01:59PM 24 A. Forty years.

01:59PM 25 Q. Did you know an individual named Chris Baker?

01:59PM 1 A. Yes.

01:59PM 2 Q. How long had you known him?

01:59PM 3 A. Thirty years.

01:59PM 4 Q. Are those names, names that you discussed during your

01:59PM 5 initial interview with the defendant?

01:59PM 6 A. Yes.

01:59PM 7 Q. Are those people that you believed you could have bought

01:59PM 8 drugs from during that time frame?

01:59PM 9 A. Yes.

01:59PM 10 Q. What type of drugs do you believe you could have bought

01:59PM 11 from Ron Serio at that time?

01:59PM 12 A. Cocaine or marijuana.

01:59PM 13 Q. In your mind, was there any limit to the amount of

01:59PM 14 cocaine you could have bought from Ron Serio?

01:59PM 15 A. No.

02:00PM 16 Q. What would be the limiting factor? Your amount of money?

02:00PM 17 A. Amount of money, yeah.

02:00PM 18 Q. Do you believe there was any limit to the amount of

02:00PM 19 marijuana you could have purchased from Ron Serio?

02:00PM 20 A. No.

02:00PM 21 Q. What drugs at that time do you believe you could have

02:00PM 22 purchased from Tom Serio?

02:00PM 23 A. Whatever money I had, I could get.

02:00PM 24 Q. What type of drugs?

02:00PM 25 A. Cocaine or marijuana.

02:00PM 1 Q. What type of drugs do you believe you could have
02:00PM 2 purchased from T.S.?

02:00PM 3 A. Cocaine and marijuana.

02:00PM 4 Q. What type of drugs do you believe you could have
02:00PM 5 purchased from David Oddo?

02:00PM 6 A. Cocaine and marijuana.

02:00PM 7 Q. What type of drugs do you believe you could have
02:00PM 8 purchased from Chris Baker?

02:00PM 9 A. Cocaine and marijuana.

02:00PM 10 Q. Are each of those individuals, at that time at least,
02:00PM 11 were each of those individuals associated with one another?

02:00PM 12 A. Yes.

02:00PM 13 Q. As the handling agent for you as a DEA confidential
02:01PM 14 source, did the defendant ever ask you to buy marijuana or
02:01PM 15 cocaine from Ron Serio?

02:01PM 16 A. No. No.

02:01PM 17 Q. Did the defendant ever ask you to make a purchase of
02:01PM 18 cocaine or marijuana from Tom Serio?

02:01PM 19 A. No.

02:01PM 20 Q. Did the defendant ever ask you to purchased cocaine or
02:01PM 21 marijuana or any other drug from T.S.?

02:01PM 22 A. Yes.

02:01PM 23 Q. What did he ask you to purchase from T.S.?

02:01PM 24 A. He told me to, you know, just gain his confidence, try to
02:01PM 25 get an ounce from him at first, and then go from there. And

02:01PM 1 if I could find out where, you know, like I said, the kid
02:01PM 2 said he had a warehouse, where the warehouse was.

02:01PM 3 Q. Did you ever make any purchases from T.S.?

02:01PM 4 A. No. Something else happened.

02:01PM 5 **MR. TRIPI:** Let me just -- just a moment, please,
02:02PM 6 Your Honor.

02:02PM 7 **BY MR. TRIPI:**

02:02PM 8 Q. I want to circle back to that in just a moment.

02:02PM 9 Were you asked to make any purchases from David Oddo?

02:02PM 10 A. No.

02:02PM 11 Q. Were you ever asked to make any purchases from
02:02PM 12 Christopher Baker?

02:02PM 13 A. No.

02:02PM 14 Q. What, if any, premises or houses -- when I say
02:02PM 15 "premises," I'm referring to houses or premises, what if any
02:02PM 16 premises associated with Ron Serio had you been to during
02:02PM 17 that time frame?

02:02PM 18 A. The house on Lebrun.

02:02PM 19 Q. Was that a big house on Lebrun?

02:02PM 20 A. Yes.

02:02PM 21 Q. How many times had you been there?

02:02PM 22 A. Well, six times. Five, six times.

02:03PM 23 Q. Had you ever gotten drugs there from Mr. Serio?

02:03PM 24 A. Yes.

02:03PM 25 Q. What had you purchased from him previously in your own

02:03PM 1 individual capacity?

02:03PM 2 A. Marijuana.

02:03PM 3 Q. And how much marijuana when you would purchase from
02:03PM 4 Mr. Serio would you typically get?

02:03PM 5 A. 5 pounds.

02:03PM 6 Q. And how much was he charging you per pound?

02:03PM 7 A. 3,200.

02:03PM 8 Q. And then you were getting it and selling it?

02:03PM 9 A. Yes.

02:03PM 10 Q. Was that transpiring before you became a confidential
02:03PM 11 source for the DEA?

02:03PM 12 A. Yes.

02:03PM 13 Q. Prior to signing up with the DEA, did you ever store any
02:03PM 14 marijuana for any members of Serio's group, the members I
02:03PM 15 just talked about?

02:04PM 16 A. No.

02:04PM 17 Q. Based on what you were purchasing and what you observed,
02:04PM 18 what was your understanding of how much marijuana was being
02:04PM 19 trafficked by Mr. Serio and others?

02:04PM 20 A. Hundreds of pounds.

02:04PM 21 Q. Were you generally able to find out when loads were
02:05PM 22 coming into town?

02:05PM 23 A. No.

02:05PM 24 Q. Were you ever asked to wear a wire and speak to Mr. Serio
02:05PM 25 about that?

02:05PM

1 A. No.

02:05PM

2 Q. According to your agreement that we just went through, if
3 you were asked to do that, would you have tried do that?

02:05PM

4 A. Yes.

02:05PM

5 Q. Now, did you start making controlled buys -- withdrawn.

02:05PM

6 Did you start making buys for Mr. Bongiovanni into
7 someone else not associated with Mr. Serio?

02:06PM

8 A. Yes.

02:06PM

9 Q. Who was that individual?

02:06PM

10 A. Peter Militello.

02:06PM

11 Q. Do you remember how many buys you made into
12 Mr. Militello?

02:06PM

13 A. I made one buy of 6 to 8 bags.

02:06PM

14 Q. Of what?

02:06PM

15 A. Heroin.

02:06PM

16 Q. After that, what happened to your status as a
17 confidential source with the DEA?

02:06PM

18 A. It was over.

02:06PM

19 Q. Who told you it was over?

02:06PM

20 A. They said that they -- he did. Mr. Bonavetti said

02:06PM

21 they -- now they got Peter Militello, they didn't need me no
22 more, they didn't need me or anybody else.

02:07PM

23 Q. How were you advised that you were done being a
24 confidential source?

02:07PM

25 A. He stopped contacting me.

02:07PM 1 Q. Did you have a conversation before that?

02:07PM 2 A. No. They just told me that, you know, we got Peter
02:07PM 3 Militello at his brother's hospital. He had so many bags on
02:07PM 4 him. And, you know, he confessed to giving the heroin that
02:07PM 5 killed Bobby. And that was it.

02:07PM 6 Q. Okay. So there was someone who died of heroin?

02:07PM 7 A. Yeah.

02:07PM 8 Q. And after that person was arrested, Mr. Militello, what
02:07PM 9 were you advised? I want to be clear, what were you advised
02:07PM 10 by Mr. Bongiovanni as to your status as a confidential
02:07PM 11 source?

02:07PM 12 A. Nothing. I wasn't asked to do anything else.

02:07PM 13 Q. At any point, were you asked to go back and talk to
02:08PM 14 anybody related to Ron Serio or T.S.?

02:08PM 15 A. No.

02:08PM 16 Q. So once Militello's arrest was done, you were done?

02:08PM 17 A. Yes.

02:08PM 18 Q. This was your decision or the defendant's decision?

02:08PM 19 A. It was their decision.

02:08PM 20 Q. "Theirs," meaning the DEA?

02:08PM 21 A. DEA, yeah.

02:08PM 22 Q. Did you work with the defendant for a long time or a
02:08PM 23 short time?

02:08PM 24 A. Not a long time.

02:08PM 25 Q. Do you remember how long it was?

02:08PM

1 A. Three weeks, maybe.

02:08PM

2 Q. But you had agreed to work for a year?

02:08PM

3 A. Yeah.

02:08PM

4 **MR. TRIPI:** One moment, please, Your Honor.

02:08PM

5 **BY MR. TRIPI:**

02:09PM

6 Q. Just one thing I wanted to clarify. As far as you

02:09PM

7 understood, based upon your knowledge of the streets at that

02:09PM

8 time, did Peter Militello have anything to do with Serio's

02:09PM

9 organization?

02:09PM

10 A. No.

02:09PM

11 **MR. TRIPI:** Okay. No further questions, Your Honor.

02:09PM

12 **THE COURT:** Cross?

02:09PM

13

02:09PM

14 **CROSS-EXAMINATION BY MR. SINGER:**

02:09PM

15 Q. Hi, Mr. R.K.

02:09PM

16 A. How are you doing?

02:09PM

17 Q. Doing pretty good.

02:09PM

18 So, you didn't want to come today; is that right?

02:09PM

19 A. No. No, I didn't.

02:09PM

20 Q. Were you using any drugs, sir?

02:09PM

21 A. Was I?

02:09PM

22 Q. Yes.

02:10PM

23 A. No.

02:10PM

24 Q. No?

02:10PM

25 A. No.

02:10PM 1 Q. You've had a problem with abusing substances over the
02:10PM 2 course of your life; is that a fair statement?

02:10PM 3 A. I'd say my whole life.

02:10PM 4 Q. Yeah. Like, so, is it pretty much your whole adult life
02:10PM 5 that you've been using some type of substances?

02:10PM 6 A. As a child, yeah, too.

02:10PM 7 Q. And that included alcohol?

02:10PM 8 A. Everything.

02:10PM 9 Q. That included drugs?

02:10PM 10 A. Yeah.

02:10PM 11 Q. Crack cocaine?

02:10PM 12 A. Yes.

02:10PM 13 Q. Heroin?

02:10PM 14 A. Yes.

02:10PM 15 Q. Anything else?

02:10PM 16 A. Pills.

02:10PM 17 Q. When you were in the throes of addiction, how often would
02:10PM 18 use these substances?

02:10PM 19 A. Any times I could get my hands on them.

02:10PM 20 Q. And I think you'd agree with me that using substances
02:10PM 21 like that continuously sometimes may affect your memory?

02:10PM 22 A. No.

02:10PM 23 Q. You don't think so?

02:10PM 24 A. No.

02:10PM 25 Q. So you think that when you use substances like crack

02:10PM 1 cocaine, or heroin, or alcohol, other things like pills --

02:10PM 2 A. When you're -- when you're using them, per se, yeah.

02:10PM 3 But when you're doing something for some people, you're

02:11PM 4 not -- those -- those people don't have you on drugs going

02:11PM 5 door to door to make buys or stuff on drugs.

02:11PM 6 So, no, I wasn't on drugs when I was dealing with him.

02:11PM 7 No.

02:11PM 8 Q. Okay. So you weren't on drugs at any time you were

02:11PM 9 dealing with --

02:11PM 10 A. No.

02:11PM 11 Q. -- Agent Bongiovanni?

02:11PM 12 A. No.

02:11PM 13 Q. Okay. April 2013, you were first contacted by members of

02:11PM 14 the Amherst Police Department; is that right?

02:11PM 15 A. Yes.

02:11PM 16 Q. And they contacted you because someone referred you to
02:11PM 17 them?

02:11PM 18 A. Yes.

02:11PM 19 Q. And that was because you had pending charges in county
02:11PM 20 court at that point in time?

02:11PM 21 A. Yes.

02:11PM 22 Q. There was a burglary third charge at that point in time?

02:11PM 23 A. Yes.

02:11PM 24 Q. And that's something you had been arrested for and
02:11PM 25 charged with in February of 2013, roughly?

02:11PM 1 A. Yes.

02:11PM 2 Q. And so one of the reasons why you agreed to meet with
02:11PM 3 Amherst Police Department was that you wanted to do something
02:12PM 4 to help yourself out on that potential charge and conviction,
02:12PM 5 correct?

02:12PM 6 A. Yes.

02:12PM 7 Q. Because you knew that you were potentially going to be
02:12PM 8 serving some time in state prison as a result of the conduct
02:12PM 9 you engaged in in February, correct?

02:12PM 10 A. Yes.

02:12PM 11 Q. So Amherst Police Department, a representative from their
02:12PM 12 organization, do you remember who you met with?

02:12PM 13 A. No.

02:12PM 14 Q. Was it a man or a woman?

02:12PM 15 A. It was a woman.

02:12PM 16 Q. You met with a woman?

02:12PM 17 A. Yeah.

02:12PM 18 Q. And they spoke to you about information you might have on
02:12PM 19 investigations of interest to them?

02:12PM 20 A. Yes.

02:12PM 21 Q. And so when you met with them, you talked about Ron
02:12PM 22 Serio, correct?

02:12PM 23 A. Not at first, no.

02:12PM 24 Q. Not at first?

02:12PM 25 A. No.

02:12PM

1 Q. So the first person you spoke about was T.S.?

02:12PM

2 A. Yes.

02:12PM

3 Q. And you knew Mr. T.S. because he was somebody that you
4 were dealing with presently at that point in time, right?

02:12PM

5 A. Yes, in the streets, yes.

02:12PM

6 Q. Over the last couple of months, correct?

02:12PM

7 A. Yes.

02:12PM

8 Q. And Mr. T.S., did they indicate to you whether he was a
9 person of interest at the Amherst Police Department?

02:13PM

10 A. No.

02:13PM

11 Q. But you talked to the Amherst Police Department about
12 T.S., correct?

02:13PM

13 A. Yes.

02:13PM

14 Q. And you talked to him -- talked about Mr. T.S. being
15 involved in marijuana dealing?

02:13PM

16 A. And cocaine, yes.

02:13PM

17 Q. And cocaine? So marijuana and cocaine?

02:13PM

18 A. Yeah.

02:13PM

19 Q. And you mentioned that you might be able to help out in
20 an investigation regarding T.S.?

02:13PM

21 A. Yes.

02:13PM

22 Q. And, so, as far as Ron Serio's concerned, he comes up
23 later in this discussion?

02:13PM

24 A. In the discussion with --

02:13PM

25 Q. With Amherst PD, correct?

02:13PM 1 A. No, not with Amherst PD, with DEA.

02:13PM 2 Q. So there was no discussion about Ron Serio that you can
02:13PM 3 recall occurring with Amherst PD at all?

02:13PM 4 A. No. The DEA is the one that bring up Ron Serio.

02:13PM 5 Q. Okay. All right. So -- so, after you meet up with
02:13PM 6 Amherst, at some point in time the person who met with you at
02:13PM 7 Amherst said, hey, we're gonna connect you with the DEA,
02:14PM 8 because we believe they might want to talk to you, right?

02:14PM 9 A. Yeah.

02:14PM 10 Q. And that person was trying to get in touch with you, and
02:14PM 11 I guess had a meeting sometime in mid April; is that right?

02:14PM 12 A. Yeah.

02:14PM 13 Q. So, let me just go backwards. So when you met up with
02:14PM 14 Amherst, that was in early April of 2013, correct?

02:14PM 15 A. Yeah.

02:14PM 16 Q. And when you got contacted about a follow-on meeting with
02:14PM 17 Amherst Police Department, that was in mid April of 2013?

02:14PM 18 A. Yeah.

02:14PM 19 Q. Okay. And when you were supposed to have that meeting
02:14PM 20 with the person from Amherst Police Department, you didn't
02:14PM 21 attend that meeting, right?

02:14PM 22 A. No.

02:14PM 23 Q. Blew off the officer?

02:14PM 24 A. Yeah.

02:14PM 25 Q. So they had to make some investigative steps to find you

02:14PM 1 again; is that right?

02:14PM 2 A. Yes.

02:14PM 3 Q. And then I think they contacted your mother to try to
02:14PM 4 find out where you might be?

02:14PM 5 A. Yeah.

02:14PM 6 Q. Because you didn't have any type of established address
02:14PM 7 at that time?

02:14PM 8 A. Correct, yeah.

02:14PM 9 Q. Were you living on the streets, sir?

02:14PM 10 A. No, with friends.

02:14PM 11 Q. Okay. But Amherst police didn't know where you were
02:14PM 12 located at that time, correct?

02:15PM 13 A. Correct.

02:15PM 14 Q. And your mother, did she know where you were located at
02:15PM 15 that time?

02:15PM 16 A. Yes.

02:15PM 17 Q. So she told the officers where to potentially find you,
02:15PM 18 and eventually the detectives found you again?

02:15PM 19 A. Yes.

02:15PM 20 Q. And at that point in time, Amherst Police Department
02:15PM 21 tells you that they want to put you in connection with the
02:15PM 22 DEA?

02:15PM 23 A. Yes.

02:15PM 24 Q. And then later that month in April, finally a meeting
02:15PM 25 occurs between you, Amherst Police Department, and the DEA;

02:15PM 1 is that right?

02:15PM 2 A. Yes.

02:15PM 3 Q. And you testified earlier that Mr. Bongiovanni was one of
02:15PM 4 the people from the DEA at that meeting?

02:15PM 5 A. Yes.

02:15PM 6 Q. Did he introduce himself to you?

02:15PM 7 A. Yes.

02:15PM 8 Q. Shake your hand?

02:15PM 9 A. No.

02:15PM 10 Q. What generally did you talk about with him?

02:15PM 11 A. At first, we talked -- at first we talked about me doing
02:15PM 12 knock to knocks, going to doors, making buys, bringing them
02:15PM 13 to the DEA. And then they would do what they do, raid the
02:15PM 14 houses, whatever. Then T.S.'s name came up.

02:16PM 15 Q. Okay.

02:16PM 16 A. And then I was asked to, you know, get him on the phone,
02:16PM 17 get him rolling.

02:16PM 18 And as all this happened, a friend of mine had died.

02:16PM 19 Q. Yeah, but --

02:16PM 20 A. And, so --

02:16PM 21 Q. I'll stop you right there, we'll get to all that.

02:16PM 22 A. Okay.

02:16PM 23 Q. But I want to take this sequentially.

02:16PM 24 A. Yeah, go ahead.

02:16PM 25 Q. And so the first meeting you had with Agent Bongiovanni

02:16PM 1 and Amherst Police Department, you don't meet over at the
02:16PM 2 office, you're meeting out somewhere in town, correct?

02:16PM 3 A. Yeah.

02:16PM 4 Q. And then they mentioned that they want to sign you up as
02:16PM 5 a confidential informant, correct?

02:16PM 6 A. Yeah.

02:16PM 7 Q. So then you have a follow-on meeting a couple days later
02:16PM 8 in April where you actually go into the office with the DEA,
02:16PM 9 correct?

02:16PM 10 A. Yeah.

02:16PM 11 Q. And that's when you sign that confidential source
02:16PM 12 agreement; is that right?

02:16PM 13 A. Yes.

02:16PM 14 Q. So that was the exhibit that Mr. Tripi showed you
02:16PM 15 earlier?

02:16PM 16 A. Yes.

02:16PM 17 Q. The 9A-2 exhibit?

02:16PM 18 A. Yes.

02:16PM 19 Q. And so you signed that agreement indicating, hey, I want
02:16PM 20 to be a confidential informant for you, for the DEA, correct?

02:17PM 21 A. Correct.

02:17PM 22 Q. All right. So, after that meeting you had with
02:17PM 23 Mr. Bongiovanni, and a couple of his DEA counterparts, to
02:17PM 24 sign that agreement, you have another meeting where you get
02:17PM 25 into what is the information you know about, correct?

02:17PM 1 A. Correct.

02:17PM 2 Q. And at that point in time, you testified earlier that
02:17PM 3 T.S. is someone you who started talking to the DEA about,
02:17PM 4 correct?

02:17PM 5 A. Correct.

02:17PM 6 Q. Just like you did with Amherst Police Department before,
02:17PM 7 correct?

02:17PM 8 A. Correct.

02:17PM 9 Q. Because he was the person that you knew very well at that
02:17PM 10 point in time, right?

02:17PM 11 A. Correct.

02:17PM 12 Q. Somebody that you dealt with very recently, correct?

02:17PM 13 A. Correct.

02:17PM 14 Q. And so you had mentioned T.S. to them. And they asked
02:17PM 15 you whether or not you'd be willing to do some type of
02:17PM 16 controlled buys with Mr. T.S.?

02:17PM 17 A. Correct.

02:17PM 18 Q. And they talked to you about generally about how that
02:17PM 19 would work, correct?

02:17PM 20 A. Correct.

02:17PM 21 Q. And at that meeting, that's when the topic of Ron Serio
02:17PM 22 comes up, you said?

02:17PM 23 A. Not at that meeting, no.

02:17PM 24 Q. Okay. So when did Ron Serio come up in conversation with
02:18PM 25 the DEA?

02:18PM 1 A. He came up maybe a week later.

02:18PM 2 Q. So a week later, you had a conversation with the DEA?

02:18PM 3 A. Because -- because T.S. was close with Ron Serio. So

02:18PM 4 when Tom said to me, I gotta wait, I can't do anything until

02:18PM 5 I talk to Ron, that's what I told them.

02:18PM 6 So that's when the two combined.

02:18PM 7 Q. Okay. And that's when you first alerted DEA to Ron

02:18PM 8 Serio?

02:18PM 9 A. Yeah.

02:18PM 10 Q. How about Tom Serio?

02:18PM 11 A. Tom Serio?

02:18PM 12 Q. When did you first talk to DEA about Tom Serio?

02:18PM 13 A. Tom Serio, I've known since '94. The first time I talked

02:18PM 14 to him was when they had me here maybe 5 years ago.

02:18PM 15 Q. No, and so I guess that's -- that's the basis of my

02:18PM 16 question. When did Tom Serio come up in your discussions

02:18PM 17 with the DEA?

02:18PM 18 A. Well, Tom Serio came up again because they're all, you

02:18PM 19 know, Tom, Ron, they're all together. They're all hanging

02:18PM 20 together. They're all -- so they all came up together.

02:18PM 21 Q. So Tom Serio you know is the brother of Ron Serio,

02:19PM 22 correct?

02:19PM 23 A. Correct, yeah.

02:19PM 24 Q. And so when you mentioned Ron Serio to the DEA, as you

02:19PM 25 testified earlier about a week after --

02:19PM 1 A. I didn't mention Ron Serio, they did.

02:19PM 2 Q. Okay. So they brought up Ron Serio to you?

02:19PM 3 A. Yeah.

02:19PM 4 Q. And then when they asked you about Ron Serio, that's when

02:19PM 5 you brought up Tom Serio?

02:19PM 6 A. I said I know his brother, yes.

02:19PM 7 Q. Okay. And what do you remember telling the DEA about Ron

02:19PM 8 Serio in that meeting?

02:19PM 9 A. Just that I could get whatever I want.

02:19PM 10 Q. Okay. You could get whatever you wanted from him?

02:19PM 11 A. Yeah.

02:19PM 12 Q. And you testified earlier that you had mentioned a couple

02:19PM 13 of different drug transactions you may have been involved

02:19PM 14 with him; is that right?

02:19PM 15 A. Yeah.

02:19PM 16 Q. What kind of buys were you doing with Ron Serio at that

02:19PM 17 time?

02:19PM 18 A. Just marijuana.

02:19PM 19 Q. Just marijuana?

02:19PM 20 A. Yeah.

02:19PM 21 Q. How many pounds of marijuana were you purchasing?

02:19PM 22 A. 4 or 5.

02:19PM 23 Q. 4 or 5 pounds?

02:19PM 24 A. Yeah.

02:19PM 25 Q. And he was charging you somewhere in the neighborhood

02:19PM 1 \$3,000 a pound for that?

02:19PM 2 A. Yeah.

02:19PM 3 Q. What would you use to purchase the marijuana from Ron

02:20PM 4 Serio?

02:20PM 5 A. Cash.

02:20PM 6 Q. Cash?

02:20PM 7 A. Um-hum.

02:20PM 8 Q. So 5 pounds of marijuana, so you had roughly \$15,000 to

02:20PM 9 go front to Mr. Serio to buy that marijuana?

02:20PM 10 A. Yes.

02:20PM 11 Q. And what were you doing for work at that point in time,

02:20PM 12 sir?

02:20PM 13 A. I was working in a pizzeria.

02:20PM 14 Q. All right. How much did you make an hour in the

02:20PM 15 pizzeria?

02:20PM 16 A. I made about \$18 an hour.

02:20PM 17 Q. \$18 an hour? What year was this again?

02:20PM 18 A. 2013.

02:20PM 19 Q. 2013.

02:20PM 20 A. Yeah.

02:20PM 21 Q. Do you know what the minimum wage was back then, sir?

02:20PM 22 A. No.

02:20PM 23 Q. Okay. But you said you were making \$18 an hour at the

02:20PM 24 pizzeria?

02:20PM 25 A. Yeah.

02:20PM 1 Q. What were you doing at the pizzeria?

02:20PM 2 A. Making pizzas.

02:20PM 3 Q. All right. So you were just there making pizzas, putting

02:20PM 4 them in the oven, taking them out of the oven?

02:20PM 5 A. Yep.

02:20PM 6 Q. So you had purchased this marijuana from Ron Serio,

02:20PM 7 according to your testimony today?

02:21PM 8 A. Yeah.

02:21PM 9 Q. How many purchases do you think you made from Ron Serio

02:21PM 10 at this time period?

02:21PM 11 A. One.

02:21PM 12 Q. You made one purchase?

02:21PM 13 A. Yeah.

02:21PM 14 Q. So that's it?

02:21PM 15 A. That's it.

02:21PM 16 Q. You testified earlier that you knew him for two years,

02:21PM 17 right?

02:21PM 18 A. True.

02:21PM 19 Q. But you purchased one time from him?

02:21PM 20 A. Yeah. It doesn't mean I wasn't there on mutual times,

02:21PM 21 when somebody else was purchasing, but I purchased one time.

02:21PM 22 Q. Again, I'd just ask you to just listen to my question.

02:21PM 23 A. One time. One time.

02:21PM 24 Q. So one time you purchased with Ron Serio. What year was

02:21PM 25 that?

02:21PM 1 A. 2012.

02:21PM 2 Q. 2012 you purchased him?

02:21PM 3 A. Yeah.

02:21PM 4 Q. And where did you sell the marijuana?

02:21PM 5 A. What's that?

02:21PM 6 Q. Where did you sell the marijuana?

02:21PM 7 A. Where did I --

02:21PM 8 Q. Correct. Where did you sell it that you purchased from

02:21PM 9 Ron Serio in 2012?

02:21PM 10 A. I just put it in the street.

02:21PM 11 Q. Where?

02:21PM 12 A. Friends.

02:21PM 13 Q. Who?

02:21PM 14 **MR. TRIPI:** Objection.

02:21PM 15 **THE COURT:** Hang on.

02:21PM 16 **MR. TRIPI:** Objection as to relevance.

02:21PM 17 **THE COURT:** Yeah.

02:21PM 18 **MR. SINGER:** Judge, I'm testing the witness's memory.

02:21PM 19 And I think I should have some latitude to ask some basic

02:22PM 20 questions about who he consummated his drugs transactions

02:22PM 21 with.

02:22PM 22 **THE COURT:** Okay. Yeah, I'll allow it. Go ahead.

02:22PM 23 **BY MR. SINGER:**

02:22PM 24 Q. So who did you sell to?

02:22PM 25 A. Ron, John, and Jerry.

02:22PM 1 Q. Ron, John, and Jerry? What are their last names?

02:22PM 2 A. I don't ask last names.

02:22PM 3 Q. What do they look like? Let's start with Ron.

02:22PM 4 A. Like me.

02:22PM 5 Q. Were they white? Were they black?

02:22PM 6 A. Like me. White.

02:22PM 7 Q. John, same thing?

02:22PM 8 A. Yes.

02:22PM 9 Q. Jerry, the same thing?

02:22PM 10 A. Yes.

02:22PM 11 Q. How old was Ron?

02:22PM 12 A. About 30.

02:22PM 13 Q. How about John?

02:22PM 14 A. 40.

02:22PM 15 Q. Jerry?

02:22PM 16 A. 35.

02:22PM 17 Q. And how long had you known these three individuals for?

02:22PM 18 A. Ten years.

02:22PM 19 Q. So did you talk about this marijuana purchase from Ron

02:22PM 20 Serio when you met with the DEA?

02:22PM 21 A. No.

02:22PM 22 Q. You didn't mention that at all?

02:22PM 23 A. No.

02:22PM 24 Q. And you'd agree with me that that would be pertinent

02:22PM 25 information if you were trying to talk with them about Ron

02:23PM 1 Serio being a supplier.

02:23PM 2 A. Again, I wasn't trying to talk to them about Mr. Serio,
02:23PM 3 they were.

02:23PM 4 **MR. TRIPI:** Objection as to what's pertinent.

02:23PM 5 **THE COURT:** No, overruled.

02:23PM 6 **BY MR. SINGER:**

02:23PM 7 Q. Do you need me to repeat the question, sir?

02:23PM 8 A. No. I mean, again, wasn't trying to talk, they were
02:23PM 9 trying to talk about him. I wasn't. I never mentioned Ron
02:23PM 10 Serio, they did.

02:23PM 11 Q. That's what I'm getting at. Is that DEA asked you a
02:23PM 12 question about Ron Serio, correct?

02:23PM 13 A. And all's I said was I can buy from Ron Serio. That was
02:23PM 14 it.

02:23PM 15 Q. That's all you said?

02:23PM 16 A. That was it. End of questioning, that was it.

02:23PM 17 Q. They didn't ask you any specifics --

02:23PM 18 A. No.

02:23PM 19 Q. -- about it whatsoever?

02:23PM 20 A. No.

02:23PM 21 Q. Okay. So DEA asks you to make some buys from T.S.; is
02:23PM 22 that right?

02:23PM 23 A. Yes.

02:23PM 24 Q. And you have a little bit of a problem at that point in
02:23PM 25 time to make these buys, right?

02:23PM 1 A. Yes.

02:23PM 2 Q. Because you owe T.S. a drug debt, correct?

02:23PM 3 A. Yes.

02:23PM 4 Q. And until that's settled up, T.S. is not gonna deal with

02:23PM 5 you, correct?

02:23PM 6 A. Correct.

02:23PM 7 Q. So part of the plan to get you back in with T.S. that the

02:24PM 8 DEA proposed to you is that they would potentially provide

02:24PM 9 you some money, and that you would use that money to pay down

02:24PM 10 the drug debt, and then get back in and make some purchases

02:24PM 11 with T.S., correct?

02:24PM 12 A. Correct.

02:24PM 13 Q. But when you reached out to T.S., you don't make contact

02:24PM 14 with him, right?

02:24PM 15 A. No, he got nervous.

02:24PM 16 Q. He got nervous?

02:24PM 17 A. Yeah.

02:24PM 18 Q. So, he didn't want to meet with you?

02:24PM 19 A. No.

02:24PM 20 Q. So, DEA proposes a plan to try to get you back in with

02:24PM 21 T.S., right?

02:24PM 22 A. Yeah.

02:24PM 23 Q. You call T.S., correct?

02:24PM 24 A. Yep.

02:24PM 25 Q. And T.S. doesn't agree to meet with you anymore, correct?

02:24PM 1 A. Correct.

02:24PM 2 Q. And you said because he was nervous?

02:24PM 3 A. I guess.

02:24PM 4 Q. Was that because he knew that you were pending a felony
02:24PM 5 charge for burglary?

02:24PM 6 **MR. TRIPI:** Objection as to what someone else knew,
02:24PM 7 Your Honor.

02:24PM 8 **THE WITNESS:** Or that he was gonna get robbed.

02:24PM 9 **THE COURT:** When there's an objection, please don't
02:24PM 10 answer.

02:24PM 11 **THE WITNESS:** Oh, I'm sorry.

02:24PM 12 **THE COURT:** No, that's okay. You don't need to
02:24PM 13 apologize.

02:24PM 14 **THE WITNESS:** Okay.

02:24PM 15 **THE COURT:** Sustained. You can rephrase the
02:24PM 16 question. But the objection to the form of the question is
02:24PM 17 sustained.

02:25PM 18 **BY MR. SINGER:**

02:25PM 19 Q. Was Mr. T.S. aware of your arrest and charge for felony
02:25PM 20 burglary at that point in time in 2013?

02:25PM 21 A. Everybody was aware.

02:25PM 22 Q. Okay. So you would agree with me, if you were pending a
02:25PM 23 charge, that may have been one of the reasons why T.S. was
02:25PM 24 nervous, correct?

02:25PM 25 A. Could have been.

02:25PM 1 Q. Okay. So he refuses in any way deal with you at that
02:25PM 2 point in time, right?

02:25PM 3 A. Correct.

02:25PM 4 Q. As far as Ron Serio is concerned, now, you never drove
02:25PM 5 anywhere and delivered drugs for Ron Serio; is that right?

02:25PM 6 A. Correct.

02:25PM 7 Q. You never drove to New York City or anything like that to
02:25PM 8 try to get any type of money for Ron Serio, correct?

02:25PM 9 A. Correct.

02:25PM 10 Q. And you I know you think you know Ron Serio. You said
02:25PM 11 you've known him for two years, correct?

02:25PM 12 A. Um-hum.

02:25PM 13 Q. You testified earlier on direct that you've been over to
02:25PM 14 Ron Serio's house on Lebrun; is that right?

02:25PM 15 A. Correct.

02:25PM 16 Q. And that's the house in Amherst on Lebrun?

02:25PM 17 A. I don't know where it is, I just know it was on Lebrun.

02:26PM 18 Q. But you remember it was a big house, right?

02:26PM 19 A. Yeah.

02:26PM 20 Q. And you said earlier that you'd been there roughly five
02:26PM 21 to six times, right?

02:26PM 22 A. About that, yeah.

02:26PM 23 Q. Do you remember testifying before a grand jury, sir?

02:26PM 24 A. Yeah.

02:26PM 25 Q. Yeah. And it was connected to this case before you came

02:26PM 1 into court today, correct?

02:26PM 2 A. Before I came into this court?

02:26PM 3 Q. Before you came into this court, did you testify before a
02:26PM 4 grand jury?

02:26PM 5 A. No.

02:26PM 6 Q. You didn't testify before a grand jury?

02:26PM 7 A. No.

02:26PM 8 **THE COURT:** I don't think he understands the
02:26PM 9 question.

02:26PM 10 **MR. SINGER:** Certainly. Let me work back a little.

02:26PM 11 **BY MR. SINGER:**

02:26PM 12 Q. So, when you were first contacted by authorities about
02:26PM 13 this case --

02:26PM 14 A. Yes.

02:26PM 15 Q. -- you met with the prosecutors in this case, correct?

02:26PM 16 A. Yes.

02:26PM 17 Q. And they asked to you testify before a grand jury,
02:26PM 18 correct?

02:26PM 19 A. Yes.

02:26PM 20 Q. And that was in this building here?

02:26PM 21 A. Yes.

02:26PM 22 Q. And the grand jury was not as similar like this, it was
02:26PM 23 just a room where several people were located, and you and
02:26PM 24 the prosecutor, and he was asking you questions, right?

02:26PM 25 A. Um-hum.

02:26PM 1 Q. And you remember testifying before them about the facts
02:27PM 2 of this case, right?

02:27PM 3 A. Correct.

02:27PM 4 Q. And do you remember testifying at that point in time when
02:27PM 5 you got asked the question about how many times you'd been
02:27PM 6 over to Ron Serio's house on Lebrun; do you remember that?

02:27PM 7 A. Yes.

02:27PM 8 Q. And do you recall stating at that point in time that you
02:27PM 9 were over there four occasions?

02:27PM 10 A. Four occasions?

02:27PM 11 Q. Yes.

02:27PM 12 A. Oh, what did I say now?

02:27PM 13 Q. Is that -- do you have any reason to disagree with me
02:27PM 14 about --

02:27PM 15 A. No.

02:27PM 16 Q. -- the grand jury testimony?

02:27PM 17 A. No.

02:27PM 18 Q. So if that's what it says, that's what it says?

02:27PM 19 A. If that's what it says, that's what it says.

02:27PM 20 Q. Okay. All right. So as far as the five or six times

02:27PM 21 that you testified today, do you agree with me that when you
02:27PM 22 testified before the grand jury, the facts of this case were
02:27PM 23 more fresh in your mind back then than they are now?

02:27PM 24 A. I don't know. Four, five, I don't know. It's --

02:27PM 25 Q. You don't know?

02:27PM 1 A. I mean, I don't keep track. Everybody's house I go to, I
02:27PM 2 don't keep track every time I go to their houses. You know,
02:27PM 3 you asked me a question, I say four. If you ask me about two
02:27PM 4 months later, it might have been five. I don't know. I
02:28PM 5 don't -- you know.

02:28PM 6 Q. So it's back and forth?

02:28PM 7 A. Not back and forth, just reality I'm sure. Everybody has
02:28PM 8 a little, you know.

02:28PM 9 Q. So I guess the reality is is you can't really sit here
02:28PM 10 today and say how many times you're over at Ron Serio's house
02:28PM 11 at that point in time back in 2013, right?

02:28PM 12 A. No. Well, I know what the house is. I know how big it
02:28PM 13 is. I know what's on the doors. I know everything, what's
02:28PM 14 inside. So I might have to -- maybe it was four maybe, maybe
02:28PM 15 it was five. It was my mistake if I said five, six. My
02:28PM 16 mistake, I apologize.

02:28PM 17 Q. Okay. So at the time that you're going over to the Serio
02:28PM 18 house, you're going over there because you're friends with
02:28PM 19 Frank Burkhardt, right?

02:28PM 20 A. Yeah.

02:28PM 21 Q. Yeah. You know Mr. Burkhardt going back how many years?

02:28PM 22 A. 45 years.

02:28PM 23 Q. I mean, you've known him practically all your life,
02:28PM 24 right?

02:28PM 25 A. Correct.

02:28PM 1 Q. And he was a friend of yours, correct?

02:28PM 2 A. Correct.

02:28PM 3 Q. And he's hanging out with Ron Serio; is that right?

02:28PM 4 A. Correct.

02:28PM 5 Q. Okay. So, you know Burkhardt better than Ron Serio; fair

02:29PM 6 statement?

02:29PM 7 A. Correct.

02:29PM 8 Q. Do you remember talking to Amherst PD --

02:29PM 9 **MR. TRIPI:** Objection, beyond the scope.

02:29PM 10 **THE COURT:** Overruled.

02:29PM 11 **BY MR. SINGER:**

02:29PM 12 Q. Do you remember talking to Amherst Police Department when

02:29PM 13 you first met up with agents regarding cooperation in this

02:29PM 14 case?

02:29PM 15 A. Do I remember talking to Amherst Police Department?

02:29PM 16 Q. Yes.

02:29PM 17 A. Yes.

02:29PM 18 Q. And do you remember talking to them about how you'd like

02:29PM 19 to try to get closer to Ron Serio?

02:29PM 20 A. No.

02:29PM 21 Q. You don't remember that?

02:29PM 22 A. No.

02:29PM 23 Q. Do you remember testifying earlier that when DEA asked

02:29PM 24 you what you knew about Ron Serio, that you would like to try

02:29PM 25 to get closer to him in some way?

02:29PM 1 A. Not I would, they want me to.

02:29PM 2 Q. Okay.

02:29PM 3 A. Yeah.

02:29PM 4 Q. And the reason for that was that you weren't very close

02:29PM 5 with Ron Serio at that point in time, correct?

02:29PM 6 A. No, I wasn't. It's not like we're hand in hand, but I

02:29PM 7 knew him.

02:29PM 8 Q. You knew him?

02:29PM 9 A. And I talked to him, yeah, but we weren't --

02:29PM 10 Q. I guess that's what I'm getting at. You knew Ron Serio,

02:30PM 11 right?

02:30PM 12 A. Yeah.

02:30PM 13 Q. But you didn't know him for 45 likes you knew Frank

02:30PM 14 Burkhardt, right?

02:30PM 15 A. No.

02:30PM 16 Q. You didn't interact with him on a narcotics basis like

02:30PM 17 T.S. for eight months prior to that, right?

02:30PM 18 A. No.

02:30PM 19 Q. So your connection is a little different with Ron Serio

02:30PM 20 than it was with other people, correct?

02:30PM 21 A. Correct.

02:30PM 22 Q. And you said that everybody knew about your burglary case

02:30PM 23 that was in existence at that time, right?

02:30PM 24 A. My burglary case?

02:30PM 25 Q. Correct.

02:30PM 1 A. Sure.

02:30PM 2 Q. That was something that was common knowledge amongst your
02:30PM 3 friends?

02:30PM 4 A. Well, I mean, I was -- I think I was on the news for it,
02:30PM 5 so, yeah.

02:30PM 6 Q. Okay. So it was widely known?

02:30PM 7 A. Yeah.

02:30PM 8 Q. And what did you try to do to get in contact with Ron
02:30PM 9 Serio at that time when the DEA asked you to?

02:30PM 10 A. They didn't ask me to get in -- they didn't ask me to
02:30PM 11 call him or anything. They asked me to call T.S..

02:30PM 12 Q. Okay. They never asked you to make any contact with Ron
02:30PM 13 Serio?

02:30PM 14 A. No. They just mentioned his name.

02:31PM 15 Q. Okay. They just mentioned his name?

02:31PM 16 A. If you hear -- yeah, if you hear anything about him, let
02:31PM 17 us know.

02:31PM 18 Q. Okay. So your cooperation or attempted cooperation to
02:31PM 19 try to talk with T.S., that pretty much went nowhere by the
02:31PM 20 middle of May, correct?

02:31PM 21 A. Correct.

02:31PM 22 Q. And at one point in time, the DEA contacts you, Special
02:31PM 23 Agent Bongiovanni contacts you to call you into the office,
02:31PM 24 correct?

02:31PM 25 A. Correct.

02:31PM 1 Q. And the purpose of that conversation was to talk to you
02:31PM 2 about cooperation and whether this is working or not,
02:31PM 3 correct?

02:31PM 4 A. I'm sorry, say that again?

02:31PM 5 Q. And the purpose of that conversation was to talk to you
02:31PM 6 about whether your cooperation would be necessary or not,
02:31PM 7 correct?

02:31PM 8 A. Yes.

02:31PM 9 Q. And so at that point in time, you also have this court
02:31PM 10 case in county court, right?

02:31PM 11 A. Yes.

02:31PM 12 Q. And you know that you're facing a felony burglary charge,
02:32PM 13 correct?

02:32PM 14 A. Yes.

02:32PM 15 Q. And you know that as a second time felony offender,
02:32PM 16 you're looking at some hard time Upstate, correct?

02:32PM 17 A. Two years.

02:32PM 18 Q. Two years? Two to four years?

02:32PM 19 A. Two to four, yeah.

02:32PM 20 Q. Two to four, yeah. Two to four, undetermined, right?

02:32PM 21 A. Hard time. Hard time.

02:32PM 22 Q. And, yeah, I mean, it's hard time. I mean, so state
02:32PM 23 prison is not a fun place, right?

02:32PM 24 A. No, it's not.

02:32PM 25 Q. Food sucks?

02:32PM 1 A. Food sucks.

02:32PM 2 Q. It's dangerous?

02:32PM 3 A. Very dangerous.

02:32PM 4 Q. You don't have any contact with --

02:32PM 5 A. Unless you're a dangerous person, then you ain't gotta

02:32PM 6 worry about it.

02:32PM 7 Q. You don't have any contact with family members or

02:32PM 8 anything like that?

02:32PM 9 A. Excuse me?

02:32PM 10 Q. You don't have any contact with any family members when

02:32PM 11 you're in state prison?

02:32PM 12 A. Sure.

02:32PM 13 Q. Sometimes, but not the same as if you're back home,

02:32PM 14 right?

02:32PM 15 A. Sure.

02:32PM 16 Q. Sometimes it can get a little lonely in there, right?

02:32PM 17 A. Nah.

02:32PM 18 Q. So this meeting was supposed to happen at the end of May,

02:32PM 19 correct?

02:32PM 20 A. Yeah.

02:32PM 21 Q. And then you hinted at this earlier. Before that

02:32PM 22 meeting, something happens to one of your friends, right?

02:32PM 23 A. Yes.

02:33PM 24 Q. And that friend is Robert Runfola?

02:33PM 25 A. Yes.

02:33PM 1 Q. So, Robert Runfola, he's an individual that you know how
02:33PM 2 long?

02:33PM 3 A. 45 years.

02:33PM 4 Q. So it goes all the way back, correct?

02:33PM 5 A. Yeah.

02:33PM 6 Q. And Robert Runfola, he, at some point in time, purchased
02:33PM 7 heroin, correct?

02:33PM 8 A. Correct.

02:33PM 9 Q. And he was a user of heroin, right?

02:33PM 10 A. Correct.

02:33PM 11 Q. And you were a user of heroin, right?

02:33PM 12 A. Correct.

02:33PM 13 Q. So Robert Runfola, before this meeting that you were

02:33PM 14 supposed to have with Special Agent Bongiovanni, he took some
02:33PM 15 heroin, correct?

02:33PM 16 A. Correct.

02:33PM 17 Q. And he eventually overdosed on that heroin, correct?

02:33PM 18 A. Correct.

02:33PM 19 Q. And you remember that he picked this up from a dealer
02:33PM 20 named Peter Militello, correct?

02:33PM 21 A. Correct.

02:33PM 22 Q. And you were with Mr. Runfola the day that he picked up
02:33PM 23 the heroin from Mr. Militello, correct?

02:33PM 24 A. Correct.

02:33PM 25 Q. It was outside the Buffalo City Court building?

02:33PM

1 A. Correct.

02:33PM

2 Q. I think, was Mr. Runfola supposed to report in for court
3 that morning?

02:34PM

4 A. Yes.

02:34PM

5 Q. And you were in car where Mr. Militello picked him up
6 outside the Buffalo City Court building, drove the two of you
7 around, to consummate the transaction?

02:34PM

8 A. Correct.

02:34PM

9 Q. And so you departed ways at that point in time, correct?

02:34PM

10 A. Who did?

02:34PM

11 Q. And you Runfola?

02:34PM

12 A. No, we went into the courtroom.

02:34PM

13 Q. You went into the courtroom? And after you got out of
14 court, did you use the heroin that you purchased?

02:34PM

15 A. We used it before we went into the courtroom.

02:34PM

16 Q. You used it before you went into court?

02:34PM

17 A. Yes.

02:34PM

18 Q. And then Mr. Runfola later passed away that day about it,
19 correct?

02:34PM

20 A. Mr. Runfola had more heroin on him that I didn't know
21 about.

02:34PM

22 Q. Okay. And he took that heroin?

02:34PM

23 A. And then he went home and shot it, and passed away.

02:34PM

24 Q. Okay. So he overdosed?

02:34PM

25 A. Yes.

02:34PM 1 Q. So when Mr. Bongiovanni contacted you, you reported this
02:34PM 2 to him, correct?

02:34PM 3 A. I just -- I let him know that -- I let him know that my
02:34PM 4 friend died, and how he died, and I was in the car. And then
02:34PM 5 light bulbs went off with all of them, and they dropped
02:35PM 6 everything, and Mr. Militello was the case now.

02:35PM 7 Q. Um-hum. And that was something that was important to the
02:35PM 8 agents to investigate, right?

02:35PM 9 A. Correct.

02:35PM 10 Q. And Robert Runfola, he's your friend, correct?

02:35PM 11 A. Correct.

02:35PM 12 Q. He passed away from doing drugs that someone else dealt
02:35PM 13 to him, right?

02:35PM 14 A. Correct.

02:35PM 15 Q. So you wanted to see some justice served in this matter
02:35PM 16 just as much, right?

02:35PM 17 A. Correct.

02:35PM 18 Q. And if Mr. Militello was the one that sold him that fatal
02:35PM 19 dose, you wanted to see Mr. Militello held accountable,
02:35PM 20 correct?

02:35PM 21 A. Correct.

02:35PM 22 Q. And you also knew that you had this case happening in
02:35PM 23 county court with the burglary charge that you were looking
02:35PM 24 at two to four years on, and you also wanted to help
02:35PM 25 yourself, right?

02:35PM 1 A. Correct.

02:35PM 2 Q. So that's when the DEA asked you to engage in undercover

02:35PM 3 buys with Peter Militello, correct?

02:35PM 4 A. Correct.

02:35PM 5 Q. And you eventually make a buy from Mr. Militello,

02:35PM 6 correct?

02:35PM 7 A. Correct.

02:35PM 8 Q. And it happens quickly, correct?

02:35PM 9 A. Correct.

02:35PM 10 Q. And later, Mr. Militello is arrested for what happened as

02:36PM 11 far as the dealing to Robert Runfola, correct?

02:36PM 12 A. Correct.

02:36PM 13 Q. And do you recall his arrest happened shortly after your

02:36PM 14 buy?

02:36PM 15 A. Correct.

02:36PM 16 Q. So, I know that the buy was towards the end of May. Do

02:36PM 17 you have any reason to disagree with me that Mr. Militello

02:36PM 18 was arrested in June?

02:36PM 19 A. June, I believe, yeah.

02:36PM 20 Q. Okay.

02:36PM 21 A. Um-hum.

02:36PM 22 Q. And so, June, you have this successful case that the DEA

02:36PM 23 has now as a result of your cooperation, correct?

02:36PM 24 A. Correct.

02:36PM 25 Q. But you're also going back into court on your pending

02:36PM 1 burglary charge, correct?

02:36PM 2 A. Correct.

02:36PM 3 Q. And you're looking at potentially being sentenced two to

02:36PM 4 four years, correct?

02:36PM 5 A. Correct.

02:36PM 6 Q. And you go in on July 3rd of 2013, and you plead guilty

02:36PM 7 to the burglary felony that you're pending, correct?

02:36PM 8 A. Correct.

02:36PM 9 Q. And sentencing at that point in time was deferred?

02:36PM 10 A. Correct.

02:36PM 11 Q. Because of the cooperation you engaged in, you had the

02:36PM 12 opportunity to enter into the judicial diversion program,

02:37PM 13 correct?

02:37PM 14 A. Correct.

02:37PM 15 Q. So that's drug court?

02:37PM 16 A. Yeah. But after he told them I wore a wire, I was

02:37PM 17 labeled as a rat, so it didn't really matter. You know.

02:37PM 18 Q. I'm sorry, I didn't hear you.

02:37PM 19 A. After he said I wore a wire to the kid, I was labeled as

02:37PM 20 a rat. So being in a drug court program, or anywhere in this

02:37PM 21 city didn't matter, because he told them I wore a wire.

02:37PM 22 Q. Okay. So you wore a wire with regard to the Militello

02:37PM 23 investigation?

02:37PM 24 A. Yeah.

02:37PM 25 Q. Okay. And that's something that the drug court

02:37PM 1 communicated back to you, or to other people?

02:37PM 2 A. No. By him telling Mr. Militello that I wore a wire, it
02:37PM 3 got to the neighborhood that I wore a wire. So everywhere I
02:37PM 4 went, drug court, streets, I'm fighting for my life. People
02:37PM 5 trying to stab me, everything. Because he told them I wore a
02:37PM 6 wire.

02:37PM 7 Q. All right. So, I mean, safe to say at that point in time
02:37PM 8 then you were burned as a confidential informant?

02:37PM 9 A. Yeah, because I thought C meant confidential informant,
02:37PM 10 not we tell everything and we just put the person on the
02:38PM 11 street to die. But you see I'm still here, I'm still walking
02:38PM 12 the streets.

02:38PM 13 Q. Okay. So, I mean, you didn't feel comfortable acting as
02:38PM 14 a confidential informant after the Militello case?

02:38PM 15 A. No.

02:38PM 16 Q. So you have a situation where you don't feel comfortable
02:38PM 17 being a confidential informant yourself anymore, correct?

02:38PM 18 A. Correct.

02:38PM 19 Q. You have a situation where you're currently in drug
02:38PM 20 court, correct?

02:38PM 21 A. Yes.

02:38PM 22 Q. And people know about your case, you testified about that
02:38PM 23 earlier, correct?

02:38PM 24 A. Correct.

02:38PM 25 Q. And then you also have the issue that at the time you're

02:38PM 1 acting as a confidential informant for DEA, you purchased
02:38PM 2 heroin, correct?

02:38PM 3 A. Correct.

02:38PM 4 Q. And you didn't purchase it from Mr. Militello at
02:38PM 5 Mr. Bongiovanni's direction, you purchased it outside of
02:38PM 6 Mr. Bongiovanni's direction, correct?

02:38PM 7 A. No. I purchased it at his direction. He gave me the
02:38PM 8 money. He gave me the money to buy it.

02:38PM 9 Q. So let's unpack that. I know that you made the
02:39PM 10 controlled buy from Mr. Militello.

02:39PM 11 A. Yeah.

02:39PM 12 Q. Correct?

02:39PM 13 A. Um-hum.

02:39PM 14 Q. But when you purchased the heroin with Robert Runfola
02:39PM 15 before you --

02:39PM 16 A. I didn't purchase no heroin with Robert Runfola.

02:39PM 17 Q. Well, you testified to that earlier, sir.

02:39PM 18 A. Robert Runfola gave me heroin.

02:39PM 19 Q. So he gave you heroin?

02:39PM 20 A. Yeah. I didn't purchase it.

02:39PM 21 Q. So you didn't purchase it, but Mr. Runfola gave it to
02:39PM 22 you?

02:39PM 23 A. Yes.

02:39PM 24 Q. And you used it?

02:39PM 25 A. Yes.

02:39PM 1 Q. And you know that that's a violation of your confidential
02:39PM 2 informant/confidential source agreement with the DEA, right?

02:39PM 3 A. Well, no, because this was before they knew Militello,
02:39PM 4 before Bobby died.

02:39PM 5 **MR. SINGER:** Ms. Champoux, would you mind bringing up
02:39PM 6 Government Exhibit 9E-2.

02:39PM 7 **THE COURT:** In evidence?

02:39PM 8 **MR. SINGER:** In evidence.

02:39PM 9 And if you can scroll to the second page. And if you
02:39PM 10 can enlarge paragraph 6 at the top, please.

02:39PM 11 **BY MR. SINGER:**

02:40PM 12 Q. So, sir, Mr. Tripi went through this agreement with you,
02:40PM 13 correct?

02:40PM 14 A. Correct.

02:40PM 15 Q. Remember going through that earlier?

02:40PM 16 A. Yes.

02:40PM 17 Q. And this was what your responsibilities were to act as a
02:40PM 18 confidential informant with the DEA, correct?

02:40PM 19 A. Correct.

02:40PM 20 Q. And so paragraph 6 talks about one of your
02:40PM 21 responsibilities, is that you're not authorized to
02:40PM 22 participate in any criminal activity except that specifically
02:40PM 23 authorized in writing by a prosecutor and/or my controlling
02:40PM 24 investigator, do you see that?

02:40PM 25 A. Yeah.

02:40PM 1 Q. And when you took the heroin from Robert Runfola, and
02:40PM 2 used it --

02:40PM 3 A. Yes.

02:40PM 4 Q. -- you engaged in a criminal act, correct?

02:40PM 5 A. I guess I did, yes.

02:40PM 6 Q. Yeah. Illegal use of heroin, correct?

02:40PM 7 A. Um-hum.

02:40PM 8 Q. And that violated your agreement, correct?

02:40PM 9 A. Um-hum.

02:40PM 10 Q. And I'm sure DEA told you at the time that if you violate
02:40PM 11 this agreement --

02:40PM 12 **MR. SINGER:** You can take that down, Ms. Champoux.

02:40PM 13 Thank you.

02:40PM 14 **BY MR. SINGER:**

02:40PM 15 Q. -- at the time if you violate that agreement, that pretty
02:40PM 16 much ends your ability to act as a confidential informant,
02:40PM 17 correct?

02:40PM 18 A. Correct. But if I told them that Peter Militello wanted
02:41PM 19 me to sniff the bag so he can make sure that I'm a good dude,
02:41PM 20 they would tell me to sniff the bag. So, you know, you gotta
02:41PM 21 do what you gotta do to get what you want, right? So if they
02:41PM 22 want him, and he says sniff the bag, that line that you just
02:41PM 23 read doesn't mean nothing. I'm gonna sniff the bag for them
02:41PM 24 to show him that I'm okay. Bottom line.

02:41PM 25 **MR. SINGER:** Just one moment, Judge.

02:41PM

1 BY MR. SINGER:

2 Q. So one of the things you have testified to when I was
3 asking you questions a few moments ago is that you believe it
4 was Mr. Bongiovanni who outed you to Mr. Militello?

5 A. I know it was.

6 Q. You know it was?

7 A. Yeah.

8 Q. Were you in the room when Mr. Bongiovanni did this?

9 A. No. But the person he told, told somebody else.

10 Q. So the person that he told, told somebody else?

11 A. It was just me and him in the car when he gave it to me.

12 It was just me and him in the car when he gave it to me.

13 Q. When you're talking about when he gave it to me, what are
14 you referring to?

15 A. The camera, the phone, the wire, everything. To use,

16 showed me how to use it and everything. It was just me and
17 him in the car.

18 Q. Okay. Do you remember having conversations with Peter

19 Militello after the controlled purchase that you consummated
20 with him?

21 A. After?

22 Q. Correct. So, let me back up. Let me ask that a
23 different way. All right?

24 So you tell Mr. Bongiovanni about Robert Runfola
25 overdosing, correct?

02:42PM

1 A. Yes.

02:42PM

2 Q. And you tell him that Peter Militello was the source of
3 the heroin that Robert Runfola overdosed on, correct?

02:43PM

4 A. Correct.

02:43PM

5 Q. You consummate a controlled purchase of heroin from Peter
6 Militello, correct?

02:43PM

7 A. Correct.

02:43PM

8 Q. And then after that was done, Mr. Runfola has a funeral
9 going on?

02:43PM

10 A. Yes.

02:43PM

11 **MR. TRIPI:** Objection, 403. Judge, if we may be
12 heard --

02:43PM

13 **THE COURT:** Yeah, I suppose. Come on up if you want
14 to argue.

02:43PM

15 (Sidebar discussion held on the record.)

02:43PM

16 **MR. TRIPI:** Your Honor, my objection is under
17 Rule 403. I have let quite a bit of questioning go without
18 any objection regarding probing the relationship between
19 Mr. Bongiovanni and this informant vis-à-vis the Militello
20 investigation.

02:43PM

21 But now, we're talking about something beyond the
22 Militello arrest. We're talking about the Runfola funeral.

02:44PM

23 Now we're getting into, like, confusing of the issues
24 under Rule 403. We're a little far afield, in other words.

02:44PM

25 **THE COURT:** No, hang on.

02:44PM 1 **MR. SINGER:** So the reason why I'm asking these
02:44PM 2 questions, Judge, is that the witness testified that my client
02:44PM 3 outed him as a source.

02:44PM 4 **THE COURT:** Right.

02:44PM 5 **MR. SINGER:** That's his belief. And he says that the
02:44PM 6 reason why was because he wore a wire.

02:44PM 7 There are DEA-6s that we provided in discovery which
02:44PM 8 talk about how Mr. Militello was -- I'm sorry, Mr. R.K. was
02:44PM 9 involve in controlled phone calls with Mr. Militello,
02:44PM 10 postdating the sale of the heroin on the controlled buy that
02:44PM 11 Mr. Bongiovanni essentially used to prosecute Militello. So
02:44PM 12 the only thing I'm getting into right here is that there
02:44PM 13 wasn't a wire involved here, it was a controlled phone call
02:44PM 14 that happened.

02:44PM 15 And the only reason why I brought up the funeral is
02:44PM 16 the controlled phone call that happens, happens after the day
02:44PM 17 of the funeral. And we talk about how Runfola's family is
02:45PM 18 pissed off at Militello, because they think he's the person
02:45PM 19 who sold it.

02:45PM 20 And Militello basically says, hey, we gotta stick to
02:45PM 21 our stories that I wasn't the guy.

02:45PM 22 **THE COURT:** So there wasn't a wire?

02:45PM 23 **MR. SINGER:** There wasn't a wire, Judge, it's just a
02:45PM 24 controlled phone call.

02:45PM 25 **THE COURT:** So why can't he explore that?

02:45PM 1 **MR. TRIPI:** I think the explanation proves the 403
02:45PM 2 objection, because it's convoluted and confusing, and it's
02:45PM 3 quite far afield.

02:45PM 4 **THE COURT:** I don't think it is at all. I don't
02:45PM 5 think so at all. He wants to impeach the statement that he
02:45PM 6 wore a wire, and that Bongiovanni outed him for wearing a
02:45PM 7 wire.

02:45PM 8 And that, according to Mr. Singer, he's got evidence
02:45PM 9 that that's not true. Why can't he -- why can't he do that?
02:45PM 10 Of course he can.

02:45PM 11 **MR. TRIPI:** I don't see how that testimony addresses
02:45PM 12 that concern. But if you disagree, that's okay, Judge.

02:45PM 13 **THE COURT:** He didn't wear a wire?

02:45PM 14 **MR. TRIPI:** How the story about the funeral tying
02:45PM 15 into the --

02:45PM 16 **THE COURT:** I don't think the funeral has any type
02:45PM 17 of --

02:45PM 18 **MR. TRIPI:** Okay.

02:45PM 19 **THE COURT:** The funeral is just for context.

02:45PM 20 You're not going to get into the funeral?

02:46PM 21 **MR. SINGER:** No, I just don't know how much he
02:46PM 22 remembers. I'm just trying to give him a marker.

02:46PM 23 **THE COURT:** The objection is overruled. Go ahead.
02:46PM 24 You're not going to get into the funeral --

02:46PM 25 **MR. SINGER:** I won't get into that, Judge.

MR. TRIPPI: I objected about the funeral.

2 | (End of sidebar discussion.)

3 BY MR. SINGER:

4 | Q. So let me restate the question, Mr. R.K..

5 So -- so after the controlled purchase, correct, you end
6 up making a telephone call to Peter Militello; is that right?

7 | Do you remember that?

8 A. Yeah. They wanted me to, like, scare him.

9 Q. And, so, when you're mentioning a wire, you weren't
10 speaking to Mr. Militello face to face, correct?

11 A. No.

12 Q. They recorded the phone call that you made to
13 Mr. Militello?

14 A. No, no, no, no, no. I got in a car with Mr. Militello to
15 make the buy, is when I had the -- I had the little camera.

16 And he said point it at him. make sure you point it at his

17 face. I had the phone, he said make sure you hold it here so
18 it gets him there. All that inside the car.

19 Q Okay So you're talking about the contr

20 you made from Militello?
21 ↑ Connect

200 0 0 1 1

22 | Page

24 for him to get him all scared up.

02:47PM

1 A. Correct.

02:47PM

2 Q. Okay. And then you said you heard from somebody, you
3 told somebody else, that Agent Bongiovanni outed you?

02:47PM

4 A. Yes.

02:47PM

5 Q. Okay. But who was that person?

02:47PM

6 A. Who, what? The person who Peter told over the phone from
7 jail?

02:47PM

8 Q. Who was the person who Mr. Bongiovanni allegedly told you
9 were using a wire?

02:47PM

10 A. Peter Militello. When he arrested him.

02:47PM

11 Q. Peter Militello?

02:47PM

12 A. Yeah.

02:47PM

13 Q. And then Peter Militello told somebody else?

02:47PM

14 A. Yeah.

02:47PM

15 Q. And then at that point in time, that was already out in
16 the street based on your knowledge?

02:47PM

17 A. Yeah.

02:47PM

18 Q. Okay.

02:47PM

19 **MR. SINGER:** I have no further questions, Judge.

02:47PM

20 **THE COURT:** Redirect?

02:47PM

21 **MR. TRIPI:** Very brief, Judge, thank you.

02:48PM

22

02:48PM

23 **REDIRECT EXAMINATION BY MR. TRIPI:**

02:48PM

24 Q. Mr. R.K., I think I have about three questions for you,

02:48PM

25 okay? Just to clarify something, just the marijuana that you

02:48PM 1 were purchasing from Mr. Serio, or any drugs that you were
02:48PM 2 purchasing, it was to resell it to make money; is that right?

02:48PM 3 A. Correct.

02:48PM 4 Q. Okay. So you weren't limited in your pizza income?

02:48PM 5 A. No.

02:48PM 6 Q. Okay. Now, I asked you about your initial meeting with

02:48PM 7 the DEA and who was in the room. And you indicated the

02:48PM 8 defendant and several other people; do you remember that?

02:48PM 9 A. Correct.

02:48PM 10 Q. In subsequent meetings after you signed that agreement,

02:48PM 11 and the defendant was your handling agent, was it you and the
02:48PM 12 defendant one on one interacting with each other?

02:48PM 13 A. Yes.

02:48PM 14 Q. And I'm not talking about later from jail with

02:48PM 15 Mr. Militello in a jail call, but I'm talking about at the

02:48PM 16 time the defendant told you you were no longer going to be a
02:48PM 17 confidential source, could you have gotten into people in the

02:49PM 18 Serio organization and made buys?

02:49PM 19 A. I could have gotten to anybody.

02:49PM 20 Q. In that organization specifically?

02:49PM 21 A. Yeah.

02:49PM 22 **MR. TRIPI:** Okay, nothing further.

02:49PM 23 **THE COURT:** Anything more, Mr. Singer?

02:49PM 24 **MR. SINGER:** No, Judge.

02:49PM 25 **THE COURT:** You can step down, sir. Thank you.

02:49PM

1 (Witness excused at 2:49 p.m.)

2 (Excerpt concluded at 2:49 p.m.)

3 * * * * *

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5

6

7 **CERTIFICATE OF REPORTER**

8

9 In accordance with 28, U.S.C., 753(b), I
10 certify that these original notes are a true and correct
11 record of proceedings in the United States District Court for
12 the Western District of New York on February 20, 2024.

13

14

15 s/ Ann M. Sawyer

16 Ann M. Sawyer, FCRR, RPR, CRR
Official Court Reporter
U.S.D.C., W.D.N.Y.

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